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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,529	11/05/2003	Rick Wendell Bajema	CFLAY.00213	8134
22858	7590	04/12/2006	EXAMINER	
CARSTENS & CAHOON, LLP P O BOX 802334 DALLAS, TX 75380			MICHALSKI, SEAN M	
			ART UNIT	PAPER NUMBER
			3725	
DATE MAILED: 04/12/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/701,529

Applicant(s)

BAJEMA ET AL.

Examiner

Sean M. Michalski

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-40 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-8, drawn to a method of slicing, classified in class 83, subclass 43.
  - II. Claims 9-17, drawn to a method for changing cutting speed, classified in class 83, subclass 311.
  - III. Claims 18-24, drawn to an apparatus for sorting work-pieces, classified in class 83, subclass 27.
  - IV. Claims 25-29, drawn to a method of transporting potatoes, classified in class 83, subclass 436.6.
  - V. Claims 30-35, drawn to an apparatus for removing food from a flume of water, classified in class 209, subclass 162.
  - VI. Claims 36-40, drawn to a method of reducing the minor dimension of a food item, classified in class 83, subclass 44.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since I is a method of slicing, and II is a method of adapting a rotational speed.

3. Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since I is a method of slicing, and III is an apparatus for sorting work pieces.

4. Inventions I and IV are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since I is a method of slicing, and IV is a method of transporting potatoes.

5. Inventions I and V are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since I is a method of slicing, and V is an apparatus for removing food from a flume.

6. Inventions I and VI are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because I does not require orientation of potatoes. The subcombination has separate utility such as orienting foods.

7. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different

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effects since II is a method of adapting a rotational speed and III is an apparatus for sorting work pieces.

8. Inventions II and IV are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since II is a method of adapting a rotational speed and IV is a method of transporting potatoes.

9. Inventions II and V are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since II is a method of adapting a rotational speed and V is an apparatus for removing food from a flume.

10. Inventions II and VI are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since II is a method of adapting a rotational speed and VI is a method of reducing the minor dimension of a food item.

11. Inventions III and IV are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since III is an apparatus for sorting work pieces and IV is a method of transporting potatoes.

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12. Inventions III and V are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since III is an apparatus for sorting work pieces and V is an apparatus for removing food from a flume.

13. Inventions III and VI are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since III is an apparatus for sorting work pieces and VI is a method of reducing the minor dimension of a food item.

14. Inventions IV and V are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since IV is a method of transporting potatoes and V is an apparatus for removing food from a flume.

15. Inventions IV and VI are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have completely different effects since IV is a method of transporting potatoes and VI is a method of reducing the minor dimension of a food item.

16. Inventions V and VI are unrelated. Inventions are unrelated if it can be shown that they have different designs, modes of operation, and effects (MPEP § 802.01 and §

806.06). In the instant case, the different inventions have completely different effects since V is an apparatus for removing food from a flume and VI is a method of reducing the minor dimension of a food item.

17. Because these inventions are independent or distinct for the reasons given above, the inventions require a different field of search (see MPEP § 808.02) and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

18. This application contains claims directed to the following patentably distinct species:

- a. The embodiment disclosed in figures 2 and 3.
- b. The embodiment disclosed in figure 6.
- c. The embodiment disclosed in figures 1a and 1b.
- d. The embodiment disclosed in figures 7a and 7b.
- e. The embodiment disclosed in figures 7c and 7d.
- f. The embodiment disclosed in figures 7g and 7h.
- g. The embodiment disclosed in figures 8a - 8d.
- h. The embodiment disclosed in figure 9.
- i. The embodiment disclosed in figures 10a and 10b.
- j. The embodiment disclosed in figures 11a and 11b.
- k. The embodiment disclosed in figures 13 and 14.

The species are independent or distinct because they depict different inventions. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.  
MPEP § 809.02(a).

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean M. Michalski whose telephone number is 571-272-6752. The examiner can normally be reached on M-F 7:30AM - 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMM

  
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